

Interim Decision #2027

MATTER OF ARAI  
In Deportation Proceedings

A-18483322

*Decided by Board March 4, 1970*

Where adverse factors are present in a given application for adjustment of status under section 245, Immigration and Nationality Act, as amended, it may be necessary for the applicant to offset these by a showing of unusual or even outstanding equities. Generally, favorable factors such as family ties, hardship, length of residence in the United States, etc., will be considered as countervailing factors meriting favorable exercise of administrative discretion. In the absence of adverse factors, adjustment will ordinarily be granted, still as a matter of discretion. [*Matter of Ortiz-Prieto*, 11 I. & N. Dec. 317, superseded.]

CHARGE:

Order: Act of 1952—Section 241(a) (2) [8 U.S.C. 1251(a) (2)]—Visitor, remained longer.

ON BEHALF OF RESPONDENT:

Donald L. Ungar, Esquire  
517 Washington Street  
San Francisco, California 94111  
(Brief submitted)

ON BEHALF OF SERVICE:

R. A. Vielhaber  
Appellate Trial Attorney

In our decision of February 6, 1970, we sustained the respondent's appeal, withdrew the order of the special inquiry officer, and granted respondent adjustment of status under section 245 of the Immigration and Nationality Act. At that time we stated that an opinion in greater detail would be forthcoming in the near future. In sustaining the respondent's appeal we have, in effect, exercised discretionary power contrary to the manner in which the special inquiry officer exercised it. In so doing, we did not conclude that the special inquiry officer was either arbitrary or capricious in his action or that he abused his discretion in any manner.

The special inquiry officer after finding the respondent to be eligible for the relief, nevertheless, concluded that such should not be granted as a matter of discretion. He based his denial on the criteria set forth in *Matter of Ortiz-Prieto*, 11 I. & N. Dec. 317